IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPL. NO.150 OF 2007
IN
APPEAL NO.152 OF 2007

Munna Idu Shaikh ..Applicant

Vs.

State of Maharashtra ..Respondent

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Mr.A.S.Khandeparkar counsel for Applicant
Mr.S.R.Shinde, A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : FEBRUARY 27, 2007

P.C.

1. Heard Mr.Khandeparkar, the learned counsel for the applicant and Mr.S.R.Shinde, the learned A.P.P. for the State.

2. The applicant has been convicted under Sections 328 and 379 read with Section 34 of IPC and sentenced to R.I. for five years. The applicant is now seeking bail.

3. The prosecution case is that the complainant Arun Devlekar was travelling by "Konkankanya" train

to Goa on 17.1.2005. Three persons came and sat on the opposite berth. The three persons were together. The present applicant was one of three persons. Out of the three persons, one of them gave a biscuit to the complainant. The complainant found its taste odd and questioned them about the biscuit and he threw remaining part of the biscuit away. However, soon thereafter, the complainant became unconscious and thereafter, his belongings came to be stolen.

4. On perusal of the evidence, it is clear that all the three persons were together. No doubt, the person who gave biscuit to the complainant, was not the present applicant, but he was one of the three persons in the group travelling together. Hence, on the basis of record, it can surely be said that he shared the common intention with the other accused.

5. Mr.Khandeparkar submitted that the identification parade cannot be relied upon because the Tahsildar who conducted the parade, was not examined. In the present case, it is seen that the complainant and the accused persons were all

together travelling by train. All these persons were in the same train compartment for number of hours and they were sitting opposite one another and as per the complainant, he had ample time to get himself acquainted with the faces of the persons who were in the group and who offered him biscuit. Not only they were sitting opposite one another for a number of hours but there was also conversation between complainant and the accused persons for considerable period of time. In such case, holding of test identification parade was not at all necessary. Hence, any lacuna in respect of the test identification parade would not affect the prosecution case.

6. Thereafter, it was submitted that there was no recovery at the instance of the present applicant. However, that by itself cannot be a ground to release the applicant on bail. Looking to the fact that complainant has identified the applicant as being one of the three persons in the group, who had given him the biscuit which made unconscious, I do not think that this is a fit case to grant bail. Application is rejected. However, the hearing of the appeal is expedited. Liberty is granted to the

applicant to prefer a fresh application for bail in case, the appeal is not heard by end of August, 2007.

7. Liberty to the applicant to prepare private paper books and the appeal to be placed for final hearing after the paper books are furnished.

8. Application is disposed of.

[V.K.Tahilramani, J.]